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NO FEE – GOV'T CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

ROBERT CLAYTON, JR., as trustee of the TRUST
AGREEMENT OF ROBERT CLAYTON, JR.
DATED APRIL 28, 2004; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

18ST CV07182

COMPLAINT FOR ABATEMENT
AND INJUNCTION

[California Civil Code section 3479, et
seq.; California Business and
Professions Code section 17200, et
seq.]

[Unlimited Action]

1 PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, alleges as follows:

2 **I. INTRODUCTION**

3 1. This action ("Action") is brought and prosecuted by Plaintiff the People of the
4 State of California ("Plaintiff"), for the purpose of abating, preventing, and enjoining a violent,
5 gang-related public nuisance that exists at a six-unit apartment complex located in South Los
6 Angeles with an address commonly known as 5614-5616 S. Western Avenue, Los Angeles,
7 CA 90062 (the "Property"). The Action is brought pursuant to the Public Nuisance Law
8 ("PNL"), California Civil Code section 3479, *et seq.* and the Unfair Competition Law, California
9 Business and Professions Code section 17200, *et seq.* ("UCL").

10 2. The Property is located in the Harvard Park neighborhood in South Los Angeles
11 on Western Avenue, a busy corridor. There are at least two elementary schools and two
12 churches within 1,000 feet of the Property, including a church directly adjacent to the Property
13 as well as a preschool and another church across the street from the Property.

14 3. The Property is a stronghold for the 55 Neighborhood Crips gang (the "Gang"),
15 whose presence on the Property is plain for the surrounding community to see, both by their
16 constant physical presence on the Property as well as the prolific gang graffiti in the rear of the
17 Property. (See Exhibits A and B.) The Gang's members and associates use the Property to
18 "hang out," and use and sell narcotics, usually while armed with firearms. The Property also
19 has a reputation among law enforcement as being used by the Gang for their sex trafficking
20 operations involving, among others, juveniles designated as Commercially Sexually Exploited
21 Children by the Los Angeles Police Department ("LAPD"). The Gang appears to have access
22 to all of the units on the Property, including two vacant units that were shoddily boarded up and
23 easily breached. Since September 2007, LAPD has made at least 21 arrests at the Property
24 and recovered at least five guns; there have also been at least three documented shootings at
25 the Property.

26 4. In 2018 alone, LAPD executed two search warrants at the Property: one on
27 February 28, 2018 ("February 28th Search Warrant") and another on November 1, 2018
28 ("November 1st Search Warrant"). During the February 28th Search Warrant, LAPD recovered

1 packaging material for narcotics, a scale, and one firearm. The defendant and Property owner
2 ROBERT CLAYTON JR. ("Defendant") was present on the Property that day. While executing
3 the November 1st Search Warrant, LAPD recovered two more firearms.

4 5. Defendant, who is 75 years old, is either unable or unwilling to abate the
5 nuisance activity at the Property. Defendant, who owns at least 5 other properties in the City
6 of Los Angeles, has a history of being unable to properly maintain this Property in particular: in
7 April 2015, Defendant was warned by the City Attorney Housing Task Force about the state of
8 disrepair and uninhabitable conditions of his Property, and that he would be criminally
9 prosecuted if the Property was not brought into compliance with the Los Angeles Civil Code.
10 By April 2016, Defendant had not addressed the issues and was subsequently criminally
11 prosecuted for and convicted of, at least in part, those violations.

12 6. Plaintiff names Defendant, an indispensable party, in this Action to bring the
13 unacceptable state of affairs at the Property to a halt, to make the Property inhospitable to
14 gang-related nuisance activity, and to make the Property safe for the people at the Property
15 and in the surrounding area.

16 II. THE PARTIES AND THE PROPERTY

17 A. The Plaintiff

18 7. Plaintiff the People of the State of California is the sovereign power of the State
19 of California designated in California Code of Civil Procedure section 731 to be the
20 complaining party in actions brought to abate, enjoin, and penalize narcotics nuisances.
21 Furthermore, the City of Los Angeles has a population in excess of 750,000, and as such,
22 California Business and Professions Code section 17204 authorizes Plaintiff to prosecute
23 actions for relief under California Business and Professions Code section 17200, *et seq.*

24 B. The Defendant

25 8. Defendant, as trustee of the TRUST AGREEMENT OF ROBERT CLAYTON, JR.
26 DATED APRIL 28, 2004 currently is and has been the record owner of the Property since at
27 least July 9, 2004. Prior to that, Defendant owned the Property in his individual capacity since
28 at least June 8, 2000.

1 9. The true names and capacities of defendants sued herein as Does 1 through 50,
2 inclusive, are unknown to Plaintiff, who therefore sues said defendants by such fictitious
3 names. When the true names and capacities of said defendants have been ascertained,
4 Plaintiff will seek leave of Court to amend this complaint and to insert in lieu of such fictitious
5 names the true names and capacities of said fictitiously named defendants.

6 **C. The Property**

7 10. The Property's legal description is "Lot 10 of Tract No. 4373, in the City of Los
8 Angeles, County of Los Angeles, State of California, as per map recorded in Book 47, Page 96
9 of Maps in the office of the County Recorder of said County," Assessor's Parcel Number 5003-
10 028-010.

11 **III. THE PUBLIC NUISANCE LAW**

12 11. "Abatement of nuisances is a long established and well recognized exercise of
13 the state's police power." (*People ex rel. Hicks v. Sarong Gals* (1974) 42 Cal.App.3d 556, 563;
14 *People ex rel. Bradford v. Barbieri* (1917) 33 Cal.App. 770, 775-778.) Civil Code section 3479
15 defines a nuisance as "[a]nything which is injurious to health, including, but not limited to, the
16 illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction
17 to the free use of property, so as to interfere with the comfortable enjoyment of life or
18 property" (*Bakersfield v. Miller* (1966) 64 Cal.2d 93, 99 ["The Legislature has defined in
19 general terms the word 'nuisance' in Civil Code section 3479"].)

20 12. California Civil Code section 3480 defines a public nuisance as "one which
21 affects at the same time an entire community or neighborhood, or any considerable number of
22 persons, although the extent of the annoyance or damage inflicted upon individuals may be
23 unequal."

24 13. In particular, the whole spectrum of typical street gang conduct, ranging from
25 loitering, to public drinking and boisterousness, to drug dealing, to gunfire, has been held to
26 "easily meet the statutory standard" for a public nuisance under the PNL. (*People ex rel. Gallo*
27 *v. Acuna* (1997) 14 Cal.4th 1090, 1120.)

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1 14. Under California Civil Code section 3491, "The remedies against a public
2 nuisance are: 1. Indictment or information; 2. A civil action; or, 3. Abatement." "An abatement
3 of a nuisance is accomplished by a court of equity by means of an injunction proper and
4 suitable to the facts of each case." (*Sullivan v. Royer* (1887) 72 Cal. 248, 249.)

5 15. California Code of Civil Procedure section 731 authorizes a city attorney to bring
6 an action to enjoin or abate a public nuisance. It provides, in pertinent part, "A civil action may
7 be brought in the name of the people of the State of California to abate a public nuisance . . .
8 by the city attorney of any town or city in which the nuisance exists." (*Ibid.*)

9 **IV. THE UNFAIR COMPETITION LAW**

10 16. The UCL, California Business and Professions Code section 17200 *et seq.*,
11 forbids any business practices otherwise forbidden by law, be it criminal, federal, state,
12 municipal, statutory, regulatory, or court-made. As the California Supreme Court has
13 explained, the UCL "'borrows' violations of other laws and treats them as unlawful practices
14 independently actionable under section 17200 *et seq.*" (*South Bay Chevrolet v. General*
15 *Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 880, citing *Hewlett v. Squaw Valley Ski*
16 *Corp.* (1997) 54 Cal. App. 4th 499, 531-532.)

17 17. As proscribed by the UCL, "[a]n 'unlawful business activity' includes anything that
18 can properly be called a business practice and that at the same time is forbidden by law."
19 (*People v. McKale* (1979) 25 Cal.3d 626, 632.) Moreover, the UCL casts a broad net. "Any
20 person performing or proposing to perform an act of unfair competition may be enjoined"
21 (Cal. Bus. & Prof. Code, § 17203.) The term "person" includes "natural persons, corporations,
22 firms, partnerships, joint stock companies, associations and other organizations of persons."
23 (Cal. Bus. & Prof. Code, § 17201.) The courts have expanded section 17200's net beyond
24 direct liability to include common law doctrines of secondary liability where the liability of each
25 defendant is predicated on his or her personal participation in the unlawful practices. (*People*
26 *v. Toomey* (1985) 157 Cal.App.3d 1, 14; *Emery v. Visa Int'l Service Ass'n* (2002) 95
27 Cal.App.4th 952, 960.)

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1 18. Civil actions under the UCL may be brought in the name of the People of the
2 State of California by any city attorney of a city having a population in excess of 750,000 (Cal.
3 Bus. & Prof. Code, § 17204), such as the City of Los Angeles. A public entity can sue
4 pursuant to section 17200 based on violations of its own municipal code, state law, or other
5 local ordinance. (See *People v. Thomas Shelton Powers, M.D., Inc.* (1992) 2 Cal.App.4th 330,
6 338-339.)

7 19. Defendants engaging in violations of the UCL may be enjoined in any court of
8 competent jurisdiction. (Cal. Bus. & Prof. Code, § 17203.) A court may make such orders or
9 judgments, including the appointment of a receiver, as may be necessary to prevent the use or
10 employment by any person of any practice constituting unfair competition. (*Ibid.*)

11 20. Although no case has specifically been called upon to define the term “business”
12 in section 17200, the courts have frequently given a broad reading to the provisions of the UCL
13 so as to effect its broad remedial purposes. (See, e.g., *Barquis v. Merchants Collection Ass’n*
14 (1972) 7 Cal.3d 94, 111-113.) Moreover, even a one-time act of misconduct can constitute a
15 violation of the UCL. (*Klein v. Earth Elements, Inc.* (1997) 59 Cal.App.4th 965, 969.)

16 21. The ownership and operation of a rental apartment complex is, axiomatically, a
17 business. (See *People ex rel. City of Santa Monica v. Gabriel* (2010), 186 Cal.App.4th 882,
18 888 (“The renting of residential housing is a business.”); see also *Barquis v. Merchants*
19 *Collection Ass’n*, (1972) 7 Cal.3d 94, 111-113 (giving a broad meaning of the UCL so as to
20 effect its broad remedial purposes).) Thus, when a property owner conducts, maintains or
21 permits a nuisance that is unlawful under the PNL to exist on the premises of such a business,
22 it is a violation of the UCL. (See *San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1323.)

23 IV. FIRST CAUSE OF ACTION FOR PUBLIC NUISANCE ABATEMENT

24 [Civil Code Section 3479, et seq. --

25 **Against all Defendants and DOES 1 through 50]**

26 22. Plaintiff incorporates Paragraphs 1 through 21 above as if fully alleged herein.

27 23. From an exact date unknown but since at least 2007 through the present time,
28 the Property has been owned, operated, occupied, used, and/or directly or indirectly permitted

1 to be occupied and used, in such a manner as to constitute a public nuisance in violation of
2 Civil Code sections 3479 and 3480. The public nuisance, as described herein, is injurious to
3 health, indecent or offensive to the senses, and/or an obstruction to the free use of property,
4 so as to substantially and unreasonably interfere with the comfortable enjoyment of life or
5 property by those persons living in the surrounding community. The public nuisance at and
6 around the Property consists of, but is not limited to: shootings, unlawful firearm possession,
7 the threatening and disorderly presence of gang members, unlawful narcotics sales, storage,
8 and/or distribution, and sex trafficking.

9 24. Defendant, and DOES 1 through 50, who owns and/or controls the Property
10 knew or should have known about the nuisance activity at the Property and failed to take
11 reasonable steps to prevent or abate the ongoing nuisance. As a result of this failure and their
12 mismanagement of the Property, they have caused and/or contributed to a serious threat to
13 the general health, safety, and welfare of law-abiding persons at the Property and in the
14 surrounding community.

15 25. Unless Defendant and DOES 1 through 50 are restrained and enjoined by order
16 of this Court, they will continue to use, occupy, and maintain, and to aid, abet, or permit,
17 directly or indirectly, the use, occupation, and maintenance of the Property, together with the
18 fixtures and appurtenances located therein, for the purpose complained of herein, to the great
19 and irreparable damage of Plaintiff and in violation of California law.

20 **V. SECOND CAUSE OF ACTION FOR UNFAIR COMPETITION**

21 **[Business and Professions Code Section 17200, et seq. --**

22 **Against All Defendants and Does 1 through 50]**

23 26. Plaintiff hereby incorporates paragraphs 1 through 25 above as if fully alleged
24 herein.

25 27. Ownership and operation of a rental apartment complex, such as the Property, is
26 a business. When the owner of such a business violates the PNL such that a nuisance exists
27 and flourishes at the Property, as alleged herein, it is also a violation of the UCL.

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28. Defendant and Does 1 through 50 have violated the UCL by conducting, maintaining, and/or permitting, directly or indirectly, a nuisance in violation of the PNL at the Property, as alleged herein.

29. Plaintiff has no adequate remedy at law, and unless Defendant and Does 1 through 50 are restrained by this Court they will continue to commit unlawful business practices or acts, thereby causing irreparable injury and harm to the public's welfare.

PRAYER

WHEREFORE, PLAINTIFF PRAYS THAT THIS COURT ORDER, ADJUDGE AND DECREE AS FOLLOWS:

AS TO THE FIRST CAUSE OF ACTION

1. That the Property, together with the fixtures and moveable property therein and thereon, be declared a public nuisance and be permanently abated as such in accordance with California Civil Code section 3491.

2. That each defendant and their agents, officers, employees and anyone acting on their behalf, and their heirs and assignees, be preliminarily and perpetually enjoined from operating, conducting, using, occupying, or in any way permitting the use of the Property as a public nuisance. Such orders should include physical and managerial improvements to the Property, including but not limited to the following: a qualified property management company to manage the Property; an internet-connected video monitoring system accessible by LAPD; removal of graffiti; properly securing vacant units; improved lighting; sufficiently secure gating; improved screening of tenants; armed, licensed security guards; the prohibition of known gang members from accessing the Property; and such other orders as are appropriate to remedy the nuisance on the Property and enhance the abatement process.

3. That Plaintiff be awarded such costs as may occur in abating said nuisance at the Property and such other costs as the Court shall deem just and proper.

4. That Plaintiff be granted such other and further relief as the Court deems just and proper, including closure and/or demolition of the Property.

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AS TO THE SECOND CAUSE OF ACTION

1. That each defendant be declared in violation of California Business and Professions Code section 17200.

2. That each defendant, as well as their agents, heirs, successors, and anyone acting on their behalf, be permanently enjoined from maintaining, operating, or permitting any unlawful or unfair business acts or practices in violation of California Business and Professions Code section 17200.

3. That the Court grant a preliminary and/or permanent injunction prohibiting each defendant, as well as their agents, heirs, successors, and anyone acting on their behalf, from engaging in the unlawful or unfair acts and/or practices described herein at the Property and in the City of Los Angeles. Such orders should include physical and managerial improvements to the Property.

4. That, pursuant to California Business and Professions Code section 17206, each defendant be assessed a civil penalty of \$2,500 for each and every act of unfair competition. Since each defendant has engaged in a continuing nuisance, each day constitutes an act of unfair competition and defendants should be assessed a civil penalty not to exceed \$3.65 million dollars.

5. That, pursuant to the Court's equitable power and California Business and Professions Code section 17203, the Court make such orders or judgments, including appointment of a receiver, to eliminate the unfair competition alleged herein.

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2. That Plaintiff be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: Nancy C. Hagan
NANCY C. HAGAN
Attorneys for Plaintiff, THE PEOPLE
STATE OF CALIFORNIA

EXHIBIT A



EXHIBIT B

